

After reviewing the record compiled to date, the undersigned Board Member finds and concludes:

Respondent warehouses airplane parts for Cessna Aircraft (Cessna). Claimant, who began working for respondent in early June 2006, handled those parts and at one time was responsible for delivering them to Cessna.

Claimant alleges she initially injured her right upper extremity when she pulled on a pallet jack that was loaded with parts and heavy batteries and it jerked her right arm. Claimant testified she immediately notified her immediate supervisor of the incident. Unaware her injury was serious, claimant did not request medical treatment at that time.

Despite having soreness in her right arm, claimant continued working for respondent and her arm gradually worsened. While continuing to work, claimant allegedly told her immediate supervisor, Krystal Hooper, who was formerly also a good friend, that her arm was getting worse. Ultimately, claimant's right upper extremity worsened to the point that she decided to seek medical treatment from Dr. Thomas Rose, her family doctor.

Dr. Rose saw claimant on August 21, 2006, and injected her right shoulder. In January 2007, the doctor ordered an x-ray and an MRI, which revealed a torn rotator cuff in the right shoulder. Dr. Rose referred claimant to a specialist, Dr. William L. Dillon, who confirmed the diagnosis.

Claimant initially testified she believed her injury occurred in either late July or early August 2006. But during cross-examination, she determined the accident actually occurred sometime before July 10, 2006, as that is approximately when her job duties changed and she stopped working inside the Cessna plant.

When claimant was terminated in early February 2007 for allegedly making too many mistakes, claimant had not undergone the MRI and, therefore, had not learned she had a torn rotator cuff. Moreover, claimant admits she did not report her injury to respondent's office manager Dee Dee Magner, whom she saw on a regular basis, allegedly because claimant did not know how workers compensation worked. Claimant also testified she believed her supervisor would have provided the appropriate paperwork or otherwise started the process. Moreover, because she was terminated, claimant did not know if she was eligible to receive any workers compensation benefits. And claimant did not learn she might qualify for those benefits until she consulted with her attorney.

Ms. Hooper also testified at the preliminary hearing. Contrary to claimant's testimony, Ms. Hooper denied that claimant mentioned she had injured her arm pulling a pallet jack at the Cessna plant. Ms. Hooper did admit, however, that she was aware when claimant saw a doctor. And despite their former friendship, Ms. Hooper contends claimant did not tell her how she hurt her shoulder.

On March 5, 2007, claimant's attorney sent respondent a letter setting forth that claimant was injured at work. That was the first written notice respondent received regarding claimant's alleged accidental injuries.

Claimant presented August 21, 2006, medical records from Dr. Rose. The history contained in those records indicates claimant pulled her right shoulder while pulling a cart. Likewise, the February 27, 2007, medical records from Dr. Dillon's office set forth a history that claimant jerked her right shoulder a year earlier while trying to lift a heavy pallet at Cessna. Those records also contain a history that claimant hurt her right shoulder in July 2006 pulling a tub onto a pallet jack at Cessna. But the latter history was crossed out on claimant's patient information form.

Judge Klein was persuaded by claimant's testimony and determined she injured her right shoulder at work and that she provided respondent with timely notice of the accident. After observing claimant, Ms. Magner, and Ms. Hooper testify, the Judge found claimant's testimony was credible. The undersigned agrees. Claimant's testimony is credible regarding how she injured her arm pulling on a pallet jack and that she promptly notified her supervisor of the incident.

Considering the record compiled to date, the undersigned affirms the Judge's findings that claimant injured her right shoulder at work while pulling on a pallet jack and that she provided respondent with timely notice. Accordingly, the June 4, 2007, preliminary hearing Order should be affirmed.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the June 4, 2007, Order entered by Judge Klein is affirmed.

IT IS SO ORDERED.

Dated this ____ day of August, 2007.

BOARD MEMBER

¹ K.S.A. 44-534a.

c: Kala A. Spigarelli, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge